

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN

&

THE HONOURABLE MRS. JUSTICE K.HEMA

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

WP(C).No. 17611 of 2007(V)

PETITIONER:

M/S MOSERBARE INDIA LTD.,
SREE PADAMAM, 4-500-D, P.V.SREEDHARAN ROAD,
KUMBALAM POST, REP.BY ITS AREA SALES MANAGER,
ANUP JOHN.

BY ADV. SRI.VARGHESE C.KURIAKOSE
SRI.PRAVEEN K. JOY
SRI.E.M.MURUGAN

RESPONDENTS:

1. STATE OF KERALA, REP.BY
ITS SECRETARY, MINISTRY OF HOME AFFAIRS,
SECRETARIAT, TRIVANDRUM.
2. THE SUPERINTENDENT OF POLICE,
KOTTAYAM DISTRICT, KOTTAYAM.
3. THE CIRCLE INSPECTOR OF POLICE,
KOTTAYAM POLICE CIRCLE,
KOTTAYAM.
4. THE SUB INSPECTOR OF POLICE,
KOTTAYAM WEST POLICE STATION,
KOTTAYAM.

BY GOVERNMENT PLEADER SRI.P.A.SALIM

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION
ON 028/06/2007, THE COURT ON 3.7.2007, DELIVERED THE
FOLLOWING:

P.R.RAMAN & K.HEMA, JJ.

W.P.(C).NO.17611 OF 2007

Dated this the 3rd day of July, 2007

JUDGMENT

Hema, J.

The petitioner is a company incorporated under the Companies Act, 1956 and engaged in business of manufacture, distribution and sales of video compact disc and digital versatile disc. The petitioner seeks a declaration that the search and seizure conducted by the fourth respondent, Sub Inspector of Police, in “Lulu Video Shop” at Kodimatha on 17.5.2007 and seizure of 23 VCDs from there, is illegal and contrary to the provisions contained in Section 52A of the Copyright Act. The petitioner also seeks for a direction to be issued to the fourth respondent to return those products forthwith.

2. Petitioner also prays for issuance of a writ of mandamus to the second respondent, Superintendent of Police, to conduct an enquiry forthwith into Exhibit P8 representation, with notice to the petitioner. The petitioner further seeks for a direction to the fourth respondent not to harass the petitioner. Lastly, another direction is also sought for i.e., the State and fourth respondent shall pay compensation of Rs.1 lakh to the petitioner for the loss of business

reputation on account of the conduct of the fourth respondent.

3. Heard both sides in detail. Learned Government Pleader vehemently contended that no harassment is meted out to the petitioner, as alleged in the petition and that there is absolutely no illegality in the search and seizure, especially in the light of the dictum laid down in the decision reported in ***State of Andhra Pradesh v. Nagoti Venkataramanna*** (1996 PTC (16) SC 654). Learned counsel for the petitioner, however, strenuously argued that the search and seizure of VCDs are illegal, since all the requirements as per law are complied with, as revealed from the details in Exhibit P5. According to him, the very seizure of the VCDs is effected under the guise that there is violation of Section 52A of the Copyright Act and it was with a view to harass the petitioner. A reading of the relevant provisions of the Copyright Act, namely, Sections 14, 52A, 63, 64 etc. will make it clear that 23 VCDs are not liable to be seized, it is contended.

4. On hearing both sides and going through the pleadings and documents, it can firstly be seen that the petitioner is a company, but the petition is filed by the Area Sales Manager of the company, representing the company. There is nothing on record to show that the Area Manager is competent to represent the company and file the petition on behalf of the company. The grievances of the company, if any, has to be ventilated only through a person who is

legally competent to represent the company and not by any employee of the company.

5. It is also interesting to note that the alleged illegal seizure, in respect of which, a declaration is sought for, is effected nowhere from the petitioner's premises. Those VCDs were seized from one "Lulu Video Shop", which is owned by one Sri.Abdul Salim, S/o.Abdulla. The petitioner has no case that the petitioner-company either own or possesses the shop from where the seizure was effected. Petitioner also has no case that the VCDs which are seized belong to the petitioner. That apart, the owner of Lulu Video Shop is not a party to this Writ petition and there is nothing to show that he had raised any grievance at all against the seizure (Exhibit P8 is a representation is made by "M/s.Lulu CD Shop" and not "M/s.Lulu Video Shop" and it is not known whether both shops are the same).

6. If at all anybody has any grievance against registration of a crime or seizure of VCDs or DVDs referred to in this Writ petition, it can be Sri.Abdul Salim who is the alleged owner of "Lulu Video Shop". It is for him to approach the appropriate forum challenging the legality of the seizure and return of the VCDs, if so advised. But, so long as there is nothing on record to show that the VCDs allegedly seized have anything to do with the petitioner herein, it is not clear how he has the locus standi to challenge the legality of such seizure and for issuance of a direction for return of the products.

7. The petitioner has no case that any crime is registered against the petitioner. The petitioner has no case that anybody from the petitioner's company was called by the police at any time in connection with the investigation of the crime or seizure of the VCDs. The petitioner has not averred in the petition, in what manner, if any, the petitioner company or anybody representing the company, is harassed by the police. But, as per the averments in the Writ Petition, "the search and seizure of the product published by the petitioner from Lulu Video shop, Kottayam for not exhibiting the name of the producer in the container is illegal, and nothing but police harassment". An alleged illegality of a seizure alone cannot be said to be harassment, especially when the legality is under serious dispute.

8. It is also averred in the petition, "the petitioner's distributors and retailers are harassed in this manner, which ultimately reflects upon the very business of the petitioner". So, according to petitioner, the harassment on certain other people reflects upon the business of the petitioner and thereby it indirectly or remotely amounts to police harassment on petitioner. This contention is too far-fetched. The expression "harassment" has a totally different connotation and meaning. This sort of an alleged "harassment" is too insufficient to persuade this Court to invoke jurisdiction under

Article 226 of the Constitution of India to issue any direction against the police. A remote consequence or impact on the petitioner's business by an alleged illegal search and seizure of certain products by police from a totally different establishment cannot be over-stretched to contend that there is police harassment on petitioner. We are not satisfied that there is any police harassment on the petitioner.

9. If a person is aggrieved because of any seizure of any products by police from his premises allegedly in violation of the provisions of the Copyright Act, the legality of such seizure and the further proceedings initiated consequent to such seizure can certainly be challenged by such person in appropriate proceedings. He can also apply for return of the products. The legality or otherwise of such seizure will be considered by the appropriate forum and efficacious remedy is available to the really affected party. But this issue cannot be made subject matter of a Writ Petition filed by another person, seeking relief against police harassment. The prayer to direct the fourth respondent to return the products cannot be entertained at all, since petitioner has no case that such products are seized from the possession of the petitioner. The petitioner has not established its title or possession over the relevant articles.

10. The other prayer for direction to conduct an enquiry into Exhibit P8 also cannot be entertained, at the instance of the petitioner. Exhibit P8 is a petition filed by a totally different person ("M/s.Lulu CD Shop") to the Circle Inspector of Police, in connection with a crime and it is for him to pursue the same. The petitioner is not an accused in that case and the petitioner has nothing to do with that crime. The legality of the seizure of the VCDs from "M/s.Lulu Video Shop" or "M/s.Lulu CD Shop" under Section 52A of the Copyright Act, if any, does not fall consideration, at the behest of the petitioner, who has nothing to do with such shops. The prayer for compensation of Rs.1 lakh is of no merit at all. None of the prayers in the petition can, therefore, be allowed.

The Writ Petition is dismissed.

P.R.RAMAN, JUDGE

K.HEMA, JUDGE

vgs.